THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 269 of 1998

DATED: 03-08-2005

Between:

The Depot Manager,
A.P.S.R.T.C., Bodhan Bus Depot.

..... PETITIONER

AND

1 A.N. Rao, (E. 302255) S/o A. Bheemaiah,
Dhobigalli, Bada Bazar,
H.No. 3-10-80, post & Taluk Armoor, Nizamabad District.
2 The Labour Court. II, Rep. by Preseding Officer,
Andhra Pradesh, Hyderabad.

.....RESPONDENTS

THE HONOURABLE SRI JUSTICE C.V.RAMULU

W.P.NO. 269 OF 1998

ORDER:

This writ petition is filed by the Depot Manager, APSRTC, Bodhan Depot, (management) being aggrieved by the Award passed by the Labour Court –II, Hydrabad, in I.D.No.754 of 1992 dated 17-4-1995, wherein the petition filed by the respondent-workman under Section 2 A(2) of the Industrial Disputes Act was answered in his favour and granted the relief of reinstatement with continuity of service, back wages and all attendant benefits while imposing penalty of censure by way of punishment for the misconduct.

There is no dispute as to the facts. It is suffice to notice that the charge sheet was issued to the workman framing the following two charges.

1. "For having absented to your duties unauthorisedly from 23.3.1990 to till date without prior permission or sanction of leave from the competent authorities, which constitutes misconduct in terms of Reg. 28 (xxvii) of APSRTC Employees (Conduct) Reg.1963."

2. "For having habituated to absent for duties unauthorisedly and reports sick very frequently. Out of 445 days you were not available for duties for

about 172 days by way of leave, sick, absent, besides weekly offs which constitutes misconduct in terms of Reg.28(xxvii) of APSRTC Employees (Conduct) Regulations, 1963".

The workman submitted his explanation. Having not satisfied with the explanation submitted by the respondent-workman, the management conducted an enquiry and after following the procedure as required under the law passed an order of removal dated 21-9-1990. Aggrieved by the same, the workman filed appeal before the competent authority and the same was also dismissed on 7-12-1990. The respondent-workman further filed a petition under Section 2 A(2) of the Industrial Disputes Act before the Labour Court –II, Hyderabad, and the same was taken on file as I.D.No.754 of 1992. Before the labour court no oral evidence was let in either on behalf of the petitioner-management or the respondent-workman. However, on behalf of the management, Exs.M.1 to M.18 were marked.

After considering the evidence available on record in detail, the labour court came to the conclusion that absolutely no case was made out against the respondent-workman and the punishment of removal from service was arbitrary and illegal. Therefore, directed reinstatement of the workman into service with continuity of service and back wages. The labour court noticed as hereunder under.

" A close scrutiny of the charges disclosed that he was unauthorisedly absenting himself without obtaining sanction of leave and subsequently the leave was sanctioned after considering the sickness. That means action is being sought to be taken against an employee after sanction of leave on medical grounds, on the pretext that he was reporting sick without sanction of leave. An action can be taken against an employee under APSRTC regulation 26 for judgment reporting sick and leaving without obtaining sanction once there is sanction no action can be initiated, as it amounts to accepting reasons given by the employee for his absence. It is a different thing when the sanction is taken for reporting sick unnecessarily and when sick leave is not sanctioned ,when once the respondent satisfies his real sickness of the employee it is unjust to take action against the petitioner. When the respondent is satisfied with his sickness it becomes sufficient cause for his absence. This is one such

case where the respondent found him to be sick and was said to have produced medical certificate. He issued a telegram and he was granted sick leave. There is a genuine cause for the petitioner to absent himself from duty. The sanction of leave applied speaks volumes about the genuineness of sickness. Action can be taken against a person who was medically unfit. The petitioner was found to be medically fit. Imposing of penalty of removal from service too harsh and excessive. I find that there is sufficient material to prove the charges and he is regularly reporting sick and leaving without prior sanction. The penalty of removal is excessive. Imposition of censure will meet the ends of justice in cases where he does not apply leave immediately and sent intimation and leave without sanction. I answer the points 1 to 3 accordingly."

As per the above, it is seen that the petitioner-management having sanctioned leave for the period covered under the charges had taken up disciplinary proceedings against the respondent-workman and he was dismissed from the service, I am of the opinion that the labour court has not committed any error in coming to the conclusion that the removal order passed by the petitioner-management is arbitrary and illegal and granting the relief of reinstatement with continuity of service and back wages and other attendant benefits. No ground is made out to interfere with the award passed by the labour court under article 226 of the Constitution of India and the writ petition is devoid of merit and is liable to be dismissed.

Accordingly the writ petition is dismissed. No order as to costs.

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C.V.RAMULU,J

03-08-2005

Stp